

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JOSE EMANUEL ALCARAZ JATOMEA,
Appellant.

No. 2 CA-CR 2018-0072
Filed October 26, 2018

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Appeal from the Superior Court in Cochise County
No. S1100CR201700701
The Honorable James L. Conlogue, Judge

AFFIRMED

COUNSEL

Robert J. Zohlmann, Tombstone
Counsel for Appellant

STATE v. JATOMEA
Decision of the Court

MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Staring and Judge Brearcliffe concurred.

E C K E R S T R O M, Chief Judge:

¶1 After a jury trial, Jose Jatomea was convicted of importing marijuana weighing more than two pounds, transporting for sale marijuana weighing more than two pounds, possession of drug paraphernalia, and conspiracy to import, transport and possess marijuana for sale.¹ The trial court sentenced him to concurrent, minimum prison terms totaling four years for the importing, transporting and conspiracy counts and to time served for the drug paraphernalia count.

¶2 Counsel has filed a brief citing *Anders v. California*, 386 U.S. 738 (1967), *State v. Leon*, 104 Ariz. 297 (1969), and *State v. Clark*, 196 Ariz. 530 (App. 1999), asserting he has reviewed the record but found no arguable, non-frivolous question of law to raise on appeal.² He asks this court to

¹The trial court merged Jatomea's three conspiracy counts into one count and dismissed his conviction for possession of marijuana for sale weighing more than four pounds.

²We note that counsel failed to strictly comply with *Clark*, despite asserting his brief is filed pursuant to that case. *Clark* requires that, upon reviewing a defendant's case and finding no arguable issue for appeal, counsel should file an *Anders* brief containing "a detailed factual and procedural history of the case with citations to the record, [so] this court can satisfy itself that counsel has in fact thoroughly reviewed the record." 196 Ariz. 530, ¶ 32. Although counsel provided a summary of the procedural history of the case and a cursory recitation of the facts, the brief contains essentially no appropriate citations to the record supporting the convictions sufficiently detailed to demonstrate he thoroughly reviewed the record. Nonetheless, we reviewed the record and are satisfied that no arguable issues exist. We recommend counsel more thoroughly demonstrate compliance with *Clark* in the future.

STATE v. JATOMEA
Decision of the Court

search the record for “potential error.” Jatomea has not filed a supplemental brief.

¶3 Viewed in the light most favorable to sustaining the verdicts, *State v. Tamplin*, 195 Ariz. 246, ¶ 2 (App. 1999), the evidence at trial was sufficient to support the jury’s findings of guilt. *See* A.R.S. §§ 13-1003; 13-3405(A)(4), (B)(11), (C), (D); 13-3415(A). In August 2017, border patrol agents saw two people believed to be undocumented aliens possibly carrying narcotics in two large backpacks near Bisbee Junction; the individuals were later identified as then-seventeen-year-old Jatomea and his co-defendant. Jatomea and the co-defendant had placed the backpacks into a car before running away. Officers later discovered two burlap backpacks weighing almost ninety-four pounds containing bundles of marijuana accounting for most of that weight; the drugs were wrapped in cellophane and packaging tape. The backpacks were found in a shed near the home of the owner of the subject car, and burlap fibers matching the backpacks were found in the trunk of the car. A detective observed “redness and . . . irritation on [Jatomea’s and the co-defendant’s] back[s]” and bruising on the front of their shoulders and discovered twine or rope in a bag belonging to the co-defendant that was consistent with that found on the backpacks. We also conclude the sentences imposed were within the statutory limits. *See* A.R.S. § 13-702(D).

¶4 Pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error and have found none. *See State v. Fuller*, 143 Ariz. 571, 575 (1985) (stating *Anders* requires court to search record for fundamental error). Accordingly, Jatomea’s convictions and sentences are affirmed.